

§ 1.628

(b) A preliminary statement may be opened only at the direction of an administrative patent judge.

[49 FR 48455, Dec. 12, 1984, as amended at 60 FR 14523, Mar. 17, 1995; 68 FR 14337, Mar. 25, 2003]

§ 1.628 Preliminary statement; correction of error.

(a) A material error arising through inadvertence or mistake in connection with a preliminary statement or drawings or a written description submitted therewith or omitted therefrom may be corrected by a motion (§ 1.635) for leave to file a corrected statement. The motion shall be supported by an affidavit stating the date the error was first discovered, shall be accompanied by the corrected statement and shall be filed as soon as practical after discovery of the error. If filed on or after the date set by the administrative patent judge for service of preliminary statements, the motion shall also show that correction of the error is essential to the interest of justice.

(b) When a party cannot attach a copy of a drawing or written description to the party's preliminary statement as required by § 1.623(c), § 1.624(c) or § 1.625(c), the party shall show good cause and explain in the preliminary statement why a copy of the drawing or written description cannot be attached to the preliminary statement and shall attach to the preliminary statement the earliest drawing or written description made in or introduced into the United States, a NAFTA country, or a WTO member country which is available. The party shall file a motion (§ 1.635) to amend its preliminary statement promptly after the first drawing, first written description, or drawing or written description first introduced into the United States, a NAFTA country, or a WTO member country becomes available. A copy of the drawing or written description may be obtained, where appropriate, by a motion (§ 1.635) for additional discovery under § 1.687 or during a testimony period.

[60 FR 14523, Mar. 17, 1995]

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§ 1.629 Effect of preliminary statement.

(a) A party shall be strictly held to any date alleged in the preliminary statement. Doubts as to definiteness or sufficiency of any allegation in a preliminary statement or compliance with formal requirements will be resolved against the party filing the statement by restricting the party to its effective filing date or to the latest date of a period alleged in the preliminary statement, as may be appropriate. A party may not correct a preliminary statement except as provided by § 1.628.

(b) Evidence which shows that an act alleged in the preliminary statement occurred prior to the date alleged in the statement shall establish only that the act occurred as early as the date alleged in the statement.

(c) If a party does not file a preliminary statement, the party:

(1) Shall be restricted to the party's effective filing date and

(2) Will not be permitted to prove that:

(i) The party made the invention prior to the party's filing date or

(ii) Any opponent derived the invention from the party.

(d) If a party files a preliminary statement which contains an allegation of a date of first drawing or first written description and the party does not file a copy of the first drawing or written description with the preliminary statement as required by § 1.623(c), § 1.624(c), or § 1.625(c), the party will be restricted to the party's effective filing date as to that allegation unless the party complies with § 1.628(b). The content of any drawing or written description submitted with a preliminary statement will not normally be evaluated or considered by the Board.

(e) A preliminary statement shall not be used as evidence on behalf of the party filing the statement.

[49 FR 48455, Dec. 12, 1984, as amended at 60 FR 14523, Mar. 17, 1995]

§ 1.630 Reliance on earlier application.

A party shall not be entitled to rely on the filing date of an earlier filed application unless the earlier application is identified (§ 1.611(c)(5)) in the notice declaring the interference or the party